



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

Overruled by WW-1276

August 19, 1947

Hon. George H. Sheppard,
Comptroller of Public Accounts,
Austin, Texas

Opinion No. V-354

Re: Reimbursement of travel expenses of a District Attorney for travel to Austin in connection with cases which he prosecuted in the trial court and which had been reversed on appeal.

Dear Sir:

From your letter presenting the above matter for an opinion by this department, we take the following statement of the District Attorney:

"The three trips to Austin, two of which occurred in 1945, and one in 1946, were made in connection with three criminal cases which I had prosecuted in the trial court and which were reversed by the Court of Crim. Appeals. The trip in 1945 was in connection with a motion for rehearing, and the other two trips were for the purpose of discussing the reindictment of the defendants with the State's Attorney and the judges of the Court of Criminal Appeals. In both of these latter cases the court had indicated that the indictments were defective but had not explained in what way they were defective. These were important cases and I deemed it necessary to secure the information before reindicting the defendants. Both defendants have been reindicted. One has been tried and acquitted and the other is still pending trial."

Article 6820, Revised Civil Statutes of Texas, insofar as pertinent, is as follows:

"All district judges and district attorneys when engaged in the discharge of their official duties in any county in this state other than the county of their residence, shall be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, . . ."

Article 25 of the Code of Criminal Procedure is in part as follows:

"Each district attorney shall represent the State in all criminal cases in the district courts of his district . . ."

Article 1811, Revised Civil Statutes provides:

"The Court of Criminal Appeals shall appoint an attorney to represent the State in all proceedings before said court, to be styled 'State Prosecuting Attorney.'"

Construing these statutes this department advised you under date of October 25, 1935, that:

" . . . Such District Attorney would not be entitled to his mileage and expenses while engaged in appearing before the Court of Criminal Appeals as Article 1811, Revised Civil Statutes of Texas, makes it the duty of the State Prosecuting Attorney to represent the State in all proceedings before said court.

"The act of said district attorney in following up his cases, while commendable, is not the official duty of said attorney and the Comptroller would not be authorized to pay the same."

"For even stronger reasons it should be held that the district attorney in this case was not performing any official duty when he traveled beyond his district to appear before the Court of Criminal Appeals in

connection with a motion for rehearing, nor when he made similar trips for the purpose of discussing the reindictment of the defendants with the State's Attorney and the Judges of the Court of Criminal Appeals. His solicitude was commendable, but his trips were not made in the discharge of a duty imposed upon him by law.

Our Opinion No. V-306 of date July 16, 1947, addressed to Hon. Leslie D. Williams, District Attorney, Brenham, Texas, is not to be construed as being in conflict with anything we have said in this opinion. Our holding in that opinion merely advised the District Attorney that: "You are entitled to charge and receive your actual and necessary expenses while engaged in discharge of your duties in counties outside of your home county, not to exceed, of course, the limitations as to amounts specified in the statute." We merely assumed the District Attorney's conclusion that he was on official business, and expressly stated in the opinion "We cannot be specific as to items for the reason that you state no items." The opinion, however, is probably capable of a construction in conflict with our conclusion in this opinion, but such was not the intention of the opinion in the light of the quotations therefrom above made.

SUMMARY

A district attorney is not entitled to payment, or reimbursement for payment of his travel expenses from the county of his residence to Austin in connection with a motion for rehearing, or for the purpose of discussing the matter of reindictment of defendants with the State's Attorney and the Judges of the Court of Criminal Appeals, in cases prosecuted by him which had been reversed. Rev. Civ. Stat., Art. 6820; Code Crim. Proc., Art. 25, Rev. Civ. Stat., Art. 1811.

Yours very truly,

APPROVED:

ATTORNEY GENERAL OF TEXAS

Tagan Dickson

FIRST ASSISTANT
ATTORNEY GENERAL
OS:wb

By

Ocie Spear

Ocie Spear
Assistant